



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1994

Ms. Beverly Luna
Legal Services Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR94-460

Dear Ms. Luna:

Your predecessor has asked whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ The request was assigned ID# 22737.

The Texas Parks and Wildlife Department (the "department") has received two open records requests for the disclosure of an internal affairs investigation report involving a former employee who was terminated. The department claims that the requested information is exempted from disclosure under section 552.108 of the Government Code because the matter has been referred to the Travis County District Attorney's Office. The department states that the Travis County District Attorney's Office asked that the report not be released during the pendency of its investigation and possible criminal prosecution of the individual under investigation.

Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, and prosecution of crime is excepted from [required public disclosure].

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Traditionally when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section exempts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under Section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-466 (1982); Open Records Decision Nos. 444, 434 (1986). A non-law enforcement agency may raise section 552.108 with regard to information in its custody if a law enforcement agency has determined that its release would unduly interfere with law enforcement. *See Attorney General Opinion MW-575* (1982); Open Records Decision Nos. 493 (1988) at 2; 272 (1981); 183 (1978). Because the department has referred the investigation to the Travis County District Attorney's Office and that office has requested that the department not release the investigation, we conclude that release of most of the information would unduly interfere with law enforcement. We note, however, that release of the information that notified the requestor of the actions taken against him and his response to those actions would not unduly interfere with law enforcement. We have marked the three documents that the department must release to the requestor. The department may withhold the remaining information under section 552.108.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

²We note that the second request is broader than the first, in that it seeks access to all of the requestor's personnel file including the investigation file. The department only submitted the investigative file for our review and has not claimed any exceptions with respect to the personnel file. We therefore assume that the department intends to release the requestor's personnel file to him.

LRD/JCH/MRC/rho

Ref.: ID# 22737

Enclosures: Marked documents

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